
PRELIMINARY DRAFT

No. 3675

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2005 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 16-21-2-6; IC 25-1-7; IC 25-1-9.

Synopsis: Health care practitioner board investigations. Requires a hospital board to report a disciplinary action against a physician to the medical licensing board. Provides that a person who files a complaint against a health care practitioner concerning a health care issue waives confidentiality of the person's health care records. Allows a board that regulates a practitioner to adopt rules concerning the prosecution of complaints and petitions for review of denial of applications. Amends the standards of practice for practitioners. Allows a board to impose a fine of up to \$5,000 for failing to comply with an order related to a narcotic drug. Establishes procedures for reporting a practitioner's conviction or plea to certain crimes.

Effective: July 1, 2005.



A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-21-2-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) The governing
3 board shall report, in writing, to the ~~Indiana~~ medical licensing board **of**
4 **Indiana** the results and circumstances of a final, a substantive, and an
5 adverse disciplinary action taken by the governing board regarding a
6 physician on the medical staff or an applicant for the medical staff if
7 the action results in voluntary or involuntary resignation, termination,
8 nonappointment, revocation, or significant reduction of clinical
9 privileges or staff membership. The report shall not be made for
10 nondisciplinary resignations or for minor disciplinary action, **such as**
11 **actions based solely on the physician's failure to maintain records**
12 **on a timely basis or failure to attend staff meetings.**

13 **(b) The report of a disciplinary action must be submitted to the**
14 **medical licensing board of Indiana not later than thirty (30) days**
15 **after the action is taken by the governing board. However, if the**
16 **governing board determines that the physician represents a clear**
17 **and immediate danger to public health and safety if allowed to**
18 **continue to practice, the report must be submitted to the Indiana**
19 **medical licensing board not later than twenty-four (24) hours after**
20 **the action is taken by the governing board.**

21 ~~(b)~~ (c) The governing board and the governing board's employees,
22 agents, consultants, and attorneys have absolute immunity from civil
23 liability for communications, discussions, actions taken, and reports
24 made concerning disciplinary action or investigation taken or
25 contemplated if the reports or actions are made in good faith and
26 without malice.

27 SECTION 2. IC 25-1-7-4 IS AMENDED TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) All complaints must be
29 written and signed by the complainant and initially filed with the
30 director. Except for employees of the attorney general's office acting in
31 their official capacity, a complaint may be filed by any person,



including members of any of the boards listed in section 1 of this chapter.

(b) A person who files a complaint against a health care professional concerning a health care issue waives confidentiality of the person's health care records that are directly related to the specific complaint filed.

SECTION 3. IC 25-1-7-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 14. A board may adopt rules under IC 4-22-2 concerning:**

(1) the filing and prosecution of complaints; and

(2) petitions for review of a denial of an application; under this chapter, IC 4-21.5, and IC 25-1-9.

SECTION 4. IC 25-1-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A practitioner shall conduct the practitioner's practice in accordance with the standards established by the board regulating the profession in question and is subject to the exercise of the disciplinary sanctions under section 9 of this chapter if, after a hearing, the board finds:

(1) a practitioner has:

(A) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice;

(B) engaged in fraud or material deception in the course of professional services or activities; or

(C) advertised services in a false or misleading manner;

(2) a practitioner has been convicted of, **entered a guilty plea to, or entered a plea of nolo contendere to** a crime that has a direct bearing on the practitioner's ability to continue to practice competently;

(3) a practitioner has knowingly violated any state statute or rule, or federal statute or regulation, regulating the profession in question;

(4) a practitioner ~~has continued to practice although the practitioner~~ has become unfit to practice due to:

(A) professional incompetence that:

(i) may include the undertaking of professional activities that the practitioner is not qualified by training or experience to undertake; and

(ii) does not include activities performed under IC 16-21-2-9;

(B) failure to keep abreast of current professional theory or practice;

(C) physical or mental disability; or

(D) addiction to, abuse of, or severe dependency upon alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely;



(5) a practitioner has engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public;

(6) a practitioner has allowed the practitioner's name or a license issued under this chapter to be used in connection with an individual who renders services beyond the scope of that individual's training, experience, or competence;

(7) a practitioner has had disciplinary action taken against the practitioner or the practitioner's license to practice in any other state or jurisdiction on grounds similar to those under this chapter;

(8) a practitioner has diverted:

(A) a legend drug (as defined in IC 16-18-2-199); or

(B) any other drug or device issued under a drug order (as defined in IC 16-42-19-3) for another person;

(9) a practitioner, except as otherwise provided by law, has knowingly prescribed, sold, or administered any drug classified as a narcotic, addicting, or dangerous drug to a habitue or addict;

(10) a practitioner has failed to comply with an order imposing a sanction under section 9 of this chapter;

(11) a practitioner has engaged in sexual contact with a patient under the practitioner's care or has used the practitioner-patient relationship to solicit sexual contact with a patient under the practitioner's care; ~~or~~

(12) a practitioner who is a participating provider of a health maintenance organization has knowingly collected or attempted to collect from a subscriber or enrollee of the health maintenance organization any sums that are owed by the health maintenance organization;

(13) a practitioner has failed to:

(A) maintain minimal standards applicable to the selection or administration of drugs; or

(B) employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

(14) a practitioner has had clinical privileges revoked, suspended, restricted, reduced, or terminated by the United States Department of Defense or the United States Department of Veterans Affairs;

(15) a practitioner has had a certification of registration to prescribe drugs terminated or suspended by the federal Drug Enforcement Administration; or

(16) a practitioner has been terminated or suspended from participation in the Medicare or Medicaid programs by the United States Department of Health and Human Services or another responsible governmental agency for an act that would be a violation of this section.

(b) A practitioner who provides health care services to the



practitioner's spouse is not subject to disciplinary action under subsection (a)(11).

(c) A certified copy of the record of disciplinary action is conclusive evidence of the other jurisdiction's disciplinary action under subsection (a)(7).

SECTION 5. IC 25-1-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) The board may impose any of the following sanctions, singly or in combination, if it finds that a practitioner is subject to disciplinary sanctions under section 4, 5, 6, 6.7, or 6.9 of this chapter or IC 25-1-5-4:

- (1) Permanently revoke a practitioner's license.
- (2) Suspend a practitioner's license.
- (3) Censure a practitioner.
- (4) Issue a letter of reprimand.
- (5) Place a practitioner on probation status and require the practitioner to:
 - (A) report regularly to the board upon the matters that are the basis of probation;
 - (B) limit practice to those areas prescribed by the board;
 - (C) continue or renew professional education under a preceptor, or as otherwise directed or approved by the board, until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or
 - (D) perform or refrain from performing any acts, including community restitution or service without compensation, that the board considers appropriate to the public interest or to the rehabilitation or treatment of the practitioner.
- (6) Assess a fine against the practitioner in an amount not to exceed **the following:**

(A) Except as provided in clause (B), one thousand dollars (\$1,000) for each violation listed in section 4 of this chapter, except for a finding of incompetency due to a physical or mental disability.

(B) Five thousand dollars (\$5,000) for each violation of section 4(a)(10) of this chapter, except for a finding of incompetency due to a physical or mental disability.

When imposing a fine, the board shall consider a practitioner's ability to pay the amount assessed. If the practitioner fails to pay the fine within the time specified by the board, the board may suspend the practitioner's license without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the practitioner's inability to pay a fine.

(b) The board may withdraw or modify the probation under subsection (a)(5) if it finds, after a hearing, that the deficiency that required disciplinary action has been remedied, or that changed circumstances warrant a modification of the order.



1 SECTION 6. IC 25-1-9-20 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 20. (a) If a practitioner has been convicted of, entered**
4 **a guilty plea to, or entered a plea of nolo contendere to a felony or**
5 **Class A misdemeanor violation of IC 9-30-5, IC 35-42, IC 35-43,**
6 **IC 35-45, or IC 35-48, the prosecuting attorney in the case shall**
7 **promptly notify the board of the conviction or plea. The notice to**
8 **the board must include the practitioner's name and address, the**
9 **nature of the offense, and the certified court documents recording**
10 **the action.**

11 **(b) The prosecuting attorney may, in the prosecuting attorney's**
12 **discretion, notify the board of the conviction, guilty plea, or plea of**
13 **nolo contendere of a practitioner for a crime not listed in**
14 **subsection (a).**

15 **(c) Not more than thirty (30) days after receipt of the**
16 **prosecutor's notification under subsection (b), the board shall**
17 **consider whether:**

18 **(1) the practitioner has become unfit to practice under section**
19 **4 of this chapter; and**

20 **(2) a complaint should be filed under IC 25-1-7-4.**

21 **(d) If the board determines under subsection (c) that a**
22 **complaint should be filed, the board shall report the matter under**
23 **IC 25-1-7 to the division of consumer protection within the office**
24 **of the attorney general.**

25 **(e) The board may designate a board member or staff member**
26 **to act on behalf of the board under this section.**

